BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	WT Docket No. 97-153
Amendments to Part 90 of the	)	RM-8584
Commission's Rules Concerning	)	RM-8623
Private Land Mobile Radio Services	)	RM-8680
	)	RM-8734

TO: The Commission

REPLY COMMENTS

Fairfield Industries, Inc. ("Fairfield"), by its counsel, hereby replies to comments filed by Phonic Ear, Inc. ("Phonic") in the above-captioned proceeding.

BACKGROUND

This proceeding was initiated in order to evaluate a number of issues affecting Part 90 of the Commission's Rules. Among other things, the Commission has asked for information regarding shared use of the band 216-217 MHz by telemetry users, on the one hand, and Low Power Radio Service licensees (e.g. law enforcement personnel), on the other hand.

Phonic, a manufacturer of auditory assistance devices for the hearing impaired, has proposed a number of restrictive rules which could severely impact the use of the 216-217 MHz band for geophysical telemetry; that is, telemetry used in the search for oil and gas. In particular Phonic argues that:

- Rule 90.259 allowing telemetry operations should "be repealed outright," or telemetry allowed only in the 217-220 MHz band (Id. at p. 7)

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- No new operations with more than 100 mW power should be permitted in 216-217 MHz (id.).

- Part 90 licensed operations should be "strictly limited to (a) non-voice transmission, (b) highly directional antennas, (c) one watt or less power, and (d) fixed locations specified on each license." (id.)

- Phonic's products -- which are unlicensed, Part 15 devices -- should be given priority over licensed, Part 90 telemetry devices in the event of interference. (id.)

In support of these proposals Phonic references a generalized, conclusory fear that, unless checked, the "proliferation" of telemetry operations in 216-217 MHz will cause widespread interference to auditory assistance devices; in this connection it references interference which affected its products in the 72-76 MHz band. Id. at 6.

DISCUSSION

Fairfield does not take issue with concerns for the welfare of the hearing-impaired. Nor, for that matter, is it clear whether Phonic's approach to telemetry operations in 216-217 MHz is meant to extend to low power, geophysical telemetry -- a use which this Commission has endorsed on multiple occasions over the years, and a use which has been conspicuous for its lack of interference to other users. Nonetheless, to the extent Phonic means to attack geophysical telemetry as a "high-powered" interferor, Fairfield would offer these reply comments in order to underscore the deficiencies in Phonic's position.

Preliminarily, it should be stressed that Phonic has no standing to complain about any interference, much less grounds to bootstrap its Part 15 status into a protected position vis-à-vis licensed users, high-powered or otherwise. See id. note 8 (unlicensed auditory assistance devices should have priority over licensed users). Indeed, Phonic's approach would make a hash of spectrum management principles, not to say the significance of an FCC "license". More than that, it would produce absurd results: Licensed transmitters would be expected to protect unlicensed

devices, the number and location of which it is impossible to ascertain. In other words, it is not possible to coordinate frequency usage with Phonic's equipment -- a situation which its own comments helped bring on by urging Part 15 treatment for most auditory assistance devices.[1]

Phonic's proposal fails muster in another respect as well. Phonic and other vendors of auditory assistance devices were allowed access to the 216-217 MHz band knowing full well that Rule 90.259 had been on the books for years (over 20); that telemetry operations were conducted throughout the band 216-220 MHz; and that its operations could be exposed to interference from other Part 15 devices as well as Part 90 licensees. In other words, on an equitable basis alone, Phonic's proposal is deficient.

Third, the Commission has already considered -- and rejected -- a similar argument by Phonic. In PR Docket No. 91-295 the Commission considered an effort by Phonic to secure exclusive access to the 400 kHz of guardbands around the 75 MHz marker beacon. There, like here, Phonic argued that the frequencies were particularly desirable since free of interference from high-powered operations. The Commission rejected the argument, holding that Phonic's devices would be required to share use of the band with low-power, industrial users as distinct from the high powered (e.g. 350 watt) uses which otherwise characterized the 72-76 MHz band and which were the source of Phonic's interference problems. Report and Order in PR Docket No. 91-295, FCC 92-534, released December 14, 1992 at notes 2 and 12.

Fourth and last, beyond its generalized assertions of fears about interference from "high-powered" transmitters, and references to numbers of telemetry licenses issued, Phonic

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[1] Phonic has argued that licensing should not be required for auditory assistance devices of 10 mW or less. See Report and Order in WT Docket No. 95-56, FCC 96-315, released August 2, 1996, at ¶ 22. In effect, then, Phonic seeks to have it both ways: The administrative convenience of Part 15 status with the protection of Part 90 licensing.

supplies no technical data whatsoever regarding the likelihood of interference from typical low powered (two watts or less) telemetry gear, much less geophysical telemetry equipment. While no one would quarrel with concerns about interference from high-powered gear of the 72-76 MHz type, far more than conclusory assertions are required before Phonic's worries about licensed low power gear would merit serious attention -- especially since there are no such high powered users in the 216-217 MHz band. See Report and Order in WT Docket No. 95-56, FCC 96-315, released August 2, 1996 at ¶ 14; see also id. at ¶ 19 (noting the lack of any technical data to support claims of interference).

For all these reasons, Phonic's proposals should be rejected; telemetry should be allowed continued use of the band under the current rules. If, despite all this, the Commission should wish to consider the merits of Phonic's position vis-à-vis geophysical telemetry in particular, Fairfield would offer the following additional points.

Most exploration for oil and gas occurs in remote, uninhabited areas: Swamps, offshore waters, the North Slope of Alaska, and the like. Hence, there is little, if any, chance that the kind of exploration which Fairfield conducts, and for which geophysical equipment was designed, would adversely affect auditory assistance devices. Indeed, Fairfield is unaware of a single complaint of interference from its nine years' of operation in the 216-220 MHz band.

Moreover, most of the telemetry involves transmission of two watts or less from six foot, omnidirectional antennas affixed directly to an acoustic sensor. Because the transmitters must be lightweight and portable, the units operate at very low power levels in order to conserve power and battery size; the trade-off, of course, is restricted range. Seismic data is typically transmitted in short duty cycles at irregular intervals.

Insofar as other bands are concerned, Phonic does not identify what they might be, nor even begin to suggest that those bands would be suitable for geophysical telemetry. In point of fact, the small size of Fairfield's transmitters compels use of frequency bands below 300 MHz due to the favorable propagation characteristics.

Finally, insofar as Phonic's other operating restrictions are concerned, seismic telemetry is always non-voice. However, it would undermine the utility of telemetry in the 216-217 MHz band if Phonic's other requirements (for example, that antennas be directional, or operations confined to a fixed set of coordinates (geophysical operations being typically itinerant)) were to be adopted.

CONCLUSION

It would not be possible to restrict geophysical telemetry use of 216-217 MHz -- a band used for this purpose for over 20 years -- without degrading the use of radio telemetry for geophysical exploration and, in the process, damaging the national policy in favor of locating new energy reserves.[2]

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[2] See The Domestic National Gas and Oil Initiative: Energy Leadership in the World Economy (Department of Energy, December 1993).

For the reasons stated herein, Phonic's proposals to exclude or limit telemetry operations in the 216-217 MHz band should be rejected.

Respectfully submitted,

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October 17, 1997

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CERTIFICATE OF SERVICE

I, Joseph C. Fezie, a secretary at Arter & Hadden, do hereby certify that on this 17th day of October 1997, a copy of the attached "Reply Comments" has been sent, United States mail, first class postage prepaid, to the following individuals:

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